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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 THOMAS FRENCH,

11 Plaintiff,

12 v.

13 PIERCE COUNTY et al.,

14 Defendants.

CASE NO. 3:22-cv-05079-DGE

ORDER GRANTING IN PART
AND DENYING IN PART
DEFENDANTS' MOTIONS TO
DISMISS (DKT. NOS. 18, 26)

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16 **I. INTRODUCTION**

17 This matter comes before the Court on Defendants Pierce County, Aaron Wolfe, and
18 Jason Chavez's Motions to Dismiss the First Amended Complaint ("FAC"). (Dkt. Nos. 18, 26.)
19 The Court considered the record and the pleadings filed in support of and in opposition to the
20 Motions and hereby grants them in part and denies them in part.

II. BACKGROUND

On November 3, 2019, “Curtis French was at home in Tacoma, [Washington] with Crystal French (ex-wife and current girlfriend), Thomas French (son), Jordan French (daughter-in-law), and his two grandsons.” (Dkt. No. 15 at 2.)

Curtis French had been heavily drinking and was inebriated. (*Id.*) At some point, Curtis French “grabbed a knife and threatened to harm himself.” (*Id.*) Jordan French called 911 for assistance. (*Id.*) While on the phone, Curtis French became “more belligerent and aggressive.” (*Id.*) With the exception of a grandson who was asleep, all family members exited the house and “waited outside for the police to arrive, in hopes they would take Curtis [French] to sober up.” (*Id.*)

“At least six Pierce County Sheriff’s Officers . . . were dispatched to the call.” (*Id.*) The dispatched officers were told “Curtis [French] was standing on the porch with a knife in hand, that Curtis [French] was extremely intoxicated, and that Curtis [French] was saying he was going to kill himself.” (*Id.* at 3.) Plaintiff asserts “Officers knew that he was in a fragile mental state.” (*Id.*)

When Officers Aaron Wolfe and Jason Chavez¹ (collectively, “Officers”) arrived, “Curtis [French] was still standing on the porch . . . with a knife in his hands.” (*Id.*) Officers Wolfe and Chavez, while “standing in the middle of the street in front of the house” had their firearms drawn on Curtis French. (*Id.*) Plaintiff alleges the Officers and the family members were not in immediate danger. (*Id.*)

¹ The FAC refers to Defendant Jason Chavez as “Officer Sanchez.” Plaintiff acknowledges this error in the Reply to the Motion to Dismiss. Plaintiff shall file a new amended complaint to correct this error.

1 Barely able to walk, Curtis French stumbled down the house steps and bumped into a
2 vehicle in the driveway. (*Id.*) He showed clear signs of intoxication and was holding his hands
3 out to his side. (*Id.*) When Curtis French “stumbled clumsily in the direction of officers Wolfe
4 and Chavez, they shot him twelve times, within seconds of arriving at the house.” (*Id.*) “Curtis
5 [French] did not attack, or attempt to attack, the officers.” (*Id.*) Curtis French died in front of
6 his family. (*Id.*) Plaintiff alleges the Officers “did not attempt to de-escalate the situation.” (*Id.*)
7 Less than a minute after firing, the other officers who had been dispatched arrived at the scene.
8 (*Id.*)

9 Plaintiff’s First Amended Complaint brings 42 U.S.C. § 1983 claims for excessive force
10 and Washington State negligence claims against Pierce County, Officer Aaron Wolfe, and
11 Officer Jason Chavez. Defendants move to dismiss all claims for failure to state a claim.

12 III. DISCUSSION

13 Federal Rule of Civil Procedure 12(b) motions to dismiss may be based on either “the
14 lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable
15 legal theory.” *Balistreri v. Pacifica Police Department*, 901 F.2d 696, 699 (9th Cir.
16 1990). Material allegations are taken as admitted and the complaint is construed in the plaintiff’s
17 favor. *Keniston v. Roberts*, 717 F.2d 1295, 1300 (9th Cir. 1983). “While a complaint attacked
18 by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff’s
19 obligation to provide the grounds of his entitlement to relief requires more than labels and
20 conclusions, and a formulaic recitation of a cause of action’s elements will not do.” *Bell Atlantic*
21 *Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citations omitted). “Factual allegations
22 must be enough to raise a right to relief above the speculative level on the assumption that all of
23 the complaint’s allegations are true,” even if such allegations are “doubtful in fact.” *Id.* at 555.

1 The complaint must allege “enough facts to state a claim to relief that is plausible on its
2 face.” *Id.* at 547.

3 **A. Excessive Force**

4 1. 42 U.S.C. § 1983 Claim against Officers Wolfe and Chavez

5 Plaintiff asserts a 42 U.S.C. § 1983 Fourth Amendment excessive force claim against the
6 Officers. To maintain a claim, Plaintiff must assert facts establishing the Defendants (1) acted
7 under color of state law and (2) violated Curtis French’s civil rights. 42 U.S.C. § 1983. The first
8 element is met as the FAC asserts the Officers are “police officer[s] employed by Pierce County
9 Sherriff’s Department,” and that “[a]ll acts committed by [the Officers] were done under color of
10 state law and within the course and scope of [their] employment with the [Pierce County
11 Sheriff’s Department].” (Dkt. No. 15 at 2.)

12 As to the second element, Fourth Amendment excessive force claims are evaluated under
13 a reasonableness standard that balances “the nature and quality of the intrusion on the
14 individual’s Fourth Amendment interests against the countervailing governmental interests at
15 stake.” *Graham v. Connor*, 490 U.S. 386, 396 (1989) (internal citations omitted). Proper
16 application of reasonableness “requires careful attention to the facts and circumstances of each
17 particular case, including the severity of the crime at issue, whether the suspect poses an
18 immediate threat to the safety of the officers or others, and whether he is actively resisting arrest
19 or attempting to evade arrest by flight.” *Id.* These factors are not exhaustive. “In some cases,
20 for example, the availability of alternative methods of capturing or subduing a suspect may be a
21 factor to consider.” *Chew v. Gates*, 27 F.3d 1432, 1440 n.5 (9th Cir. 1994).

22 *a. Immediate Threat to Others*

1 The FAC alleges Curtis French was so drunk he could not walk, let alone coordinate an
2 attack. (Dkt. No. 15 at 2–3.) It also alleges that, although he was standing on the porch with a
3 knife in his hand when the Officers arrived, he stumbled “clumsily in the direction of” the
4 Officers without attacking or attempting to attack the Officers. (*Id.* at 3.) It further alleges the
5 Officers were standing in the middle of the street (*id.*), presumably a distance from Curtis
6 French.

7 In *Smith v. City of Hemet*, the Ninth Circuit found a suspect who was similarly standing
8 on the porch while his wife was on the lawn when officers arrived did not pose an immediate
9 threat to anyone. 394 F.3d 689, 703 (9th Cir. 2005) (“When Officer Reinbolt arrived, Smith was
10 standing on his porch alone and separated from his wife. He had no guns or other weapons in his
11 possession and there were none in the house—and he was clad in his pajamas. Under these
12 circumstances, the nature of the crime at issue provides little, if any, basis for the officers’ use of
13 physical force.”) Admittedly, *Smith* is distinguishable because unlike in *Smith*, Curtis French
14 had a knife in his hand. However, taking the allegations in the FAC as true, Curtis French did
15 not appear to pose an immediate threat to others. Arguably, there was no basis justifying the use
16 of physical force.

17 *b. Severity of the Crime*

18 According to the FAC, Curtis French had not committed a crime. (*Id.* at 2.) His
19 daughter-in-law called for assistance for Curtis French’s own safety, not because he was
20 threatening others. (*Id.*) And, although Curtis French was holding a knife when the Officers
21 arrived, he was standing alone and not actively threatening anyone. (*Id.* at 3.) Thus, as alleged
22 in the FAC, no crime had been committed, making it difficult to conclude shooting Curtis French
23 12 times was warranted.

1 *c. Resisting Arrest or Attempts to Evade*

2 The FAC alleges Curtis French stumbled towards the Officers' direction while clearly
3 inebriated. (*Id.* at 3.) As described by the FAC, there is no indication he was resisting arrest or
4 attempting to evade law enforcement.

5 *d. Availability of Alternative Methods of Capturing or Subduing*

6 Taking the facts alleged in the FAC as true, there would have been other means of
7 engaging Curtis French rather than shooting him 12 times. Though it may later be identified
8 through discovery that the Officers did attempt to engage Curtis French by shouting commands
9 or taking other steps, for now the FAC indicates the Officers took no action other than to shoot
10 Curtis French 12 times.

11 Considering the severity and extent of the force used, the *Graham* factors, and the
12 availability of other means of subduing Curtis French, the FAC alleges sufficient facts to show it
13 was unreasonable for Officers Wolfe and Chavez to shoot Curtis French 12 times.

14 Accordingly, Plaintiff's § 1983 excessive force claim against the Officers is sufficiently
15 pled.

16 2. 42 U.S.C. § 1983 Monell Claim against Pierce County

17 "While local governments may be sued under § 1983, they cannot be held vicariously
18 liable for their employees' constitutional violations." *Gravelet-Blondin v. Shelton*, 728 F.3d
19 1086, 1096 (9th Cir. 2013). Instead, a plaintiff must establish "the local government had a
20 deliberate policy, custom, or practice that was the moving force behind the constitutional
21 violation [they] suffered." *Whitaker v. Garcetti*, 486 F.3d 572, 581 (9th Cir. 2007) (citation and
22 internal quotation marks omitted); *see also Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 691–92
23 (1978). A plaintiff must allege "(1) 'a particular municipal action *itself* violates federal law, or
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1 directs an employee to do so’; or (2) the municipality, through inaction, failed to implement
2 adequate policies or procedures to safeguard its community members’ federally protected
3 rights.” *Hyun Ju Park v. City and County of Honolulu*, 952 F.3d 1136, 1141 (9th Cir. 2020)
4 (quoting *Board of County Com’rs of Bryan County v. Brown*, 520 U.S. 397, 404, 407–408
5 (1997)). A “municipality also can be liable for an isolated constitutional violation if the final
6 policymaker ‘ratified’ a subordinate’s actions. *Christie v. Iopa*, 176 F.3d 1231, 1238 (9th Cir.
7 1999).

8 *a. Official policy*

9 Plaintiff alleges “Defendant Pierce County and its officials maintained or permitted
10 official policies or customs that caused the damages described herein, including a failure to
11 provide adequate training and supervision to law enforcement officers regarding constitutional
12 limits on the use of deadly force.” (Dkt. No. 15 at 3.) As support for this allegation, Plaintiff
13 identifies Pierce County “required” its officers to attend the BLEA but failed to provide any
14 additional training before allowing its officers to respond to “a high-stress call involving an
15 intoxicated and mentally unstable person.” (*Id.* at 3.) Plaintiff further alleges the Officers’
16 training “was inadequate in relation to the task they were asked to perform” and that “inadequate
17 training and supervision ultimately led to the constitutional deprivations described herein.” (*Id.*
18 at 4.)

19 As a preliminary matter, training at the BLEA is required by State law and administered
20 by the State. *See* Wash. Rev. Code § 43.101.020 (“There is hereby created and established a
21 state commission to be known and designated as the Washington state criminal justice training
22 commission.”); Wash. Rev. Code § 41.101.200(1) (“All law enforcement . . . shall engage in
23 basic law enforcement training which complies with standards adopted by the commission[.]”).
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1 To the extent Plaintiff alleges training at the BLEA was inadequate, Pierce County would not be
2 the responsible party.

3 As far as Pierce County's alleged policy of inadequate training and supervision, Plaintiff
4 offers no facts supporting the conclusion that allowing graduated BLEA officers to engage in law
5 enforcement duties without providing additional training or supervision amounted to "a
6 particular municipal action *itself* [that] violate[d] federal law, or direct[ed] an employee to do
7 so." *Hyun Ju Park*, 952 F.3d at 1141.

8 Accordingly, Plaintiff fails to identify an official policy that led to the injuries claimed.
9 Instead, the primary focus of Plaintiff's claim is Pierce County's alleged failure to train the
10 Officers.

11 *b. Failure to implement adequate policies: failure to train*

12 "[I]nadequacy of police training may serve as the basis for § 1983 liability only where the
13 failure to train amounts to deliberate indifference to the rights of persons with whom the police
14 come into contact." *City of Canton, Ohio v. Harris*, 489 U.S. 378, 388 (1989). "[D]eliberate
15 indifference' is a stringent standard of fault, requiring proof that a municipal actor disregarded a
16 known or obvious consequence of his action." *Brown*, 520 U.S. at 410. "A pattern of similar
17 constitutional violations by untrained employees is 'ordinarily necessary' to demonstrate
18 deliberate indifference for purposes of failure to train." *Connick v. Thompson*, 563 U.S. 51, 62
19 (2011) (citing *Brown*, 520 U.S. at 409). "Without notice that a course of training is deficient in a
20 particular respect, decisionmakers can hardly be said to have deliberately chosen a training
21 program that will cause violations of constitutional rights." *Connick*, 563 U.S. at 62. It is only
22 in instances where "the unconstitutional consequences of failing to train [are] so patently obvious
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1 that a city [would] be liable under § 1983 without proof of a pre-existing pattern of violations.”
2 *Id.* at 64.

3 In this matter, the FAC does not identify a pattern of similar constitutional violations
4 such that Pierce County had notice the Officers were not properly trained before allowing them
5 to respond to calls. And, although the FAC alleges Pierce County failed to train the Officers
6 “regarding constitutional limits on the use of deadly force” (Dkt. No. 15 at 3), the FAC does not
7 assert these officers were not provided such training at the BLEA, that Pierce County was aware
8 of this, and that nonetheless, Pierce County deliberately disregarded the need to provide such
9 training to its officers.

10 Also, while the FAC asserts Pierce County should have provided “additional relevant
11 training” (*id.* at 3–4), the FAC does not identify the additional relevant training that should have
12 been provided. Thus, there is no basis to conclude the unconstitutional consequences of failing
13 to train were so patently obvious that Pierce County could be liable under § 1983 without proof
14 of a pre-existing pattern of violations.

15 *c. Ratification*

16 “To show ratification, a plaintiff must prove that the ‘authorized policymakers approve a
17 subordinate’s decision and the basis for it.’” *Christie v. Iopa*, 176 F.3d at 1239 (quoting *City of*
18 *St. Louis v. Paprotnik*, 485 U.S. 112, 127 (1988)). It “generally requires more than
19 acquiescence.” *Sheehan v. City & Cnty. of San Francisco*, 743 F.3d 1211, 1231 (9th Cir. 2014),
20 rev’d in part on other grounds, 575 U.S. 600 (2015). “We have found municipal liability on the
21 basis of ratification when the officials involved adopted and expressly approved of the acts of
22 others who caused the constitutional violation.” *Trevino v. Gates*, 99 F.3d 911, 920 (9th Cir.
23 1996). “The mere failure to discipline [an officer] does not amount to ratification of their
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1 allegedly unconstitutional actions.” *Sheehan*, 743 F.3d at 1231. Moreover, an organizational
2 entity is not “an official” sufficient for a *Monell* ratification claim. *See Dizon v. City of S. San*
3 *Francisco*, 2018 WL 5023354, at *5 (N.D. Cal. Oct. 16, 2018) (dismissing *Monell* ratification
4 where complaint alleged the municipality in general, and not an official with final policy-making
5 authority, ratified the alleged conduct); *Shulthies v. Nat’l Passenger R.R. Corp.*, 650 F. Supp. 2d
6 994, 1001 (N.D. Cal. 2009) (ratification claim “fails because the third *Monell* avenue applies to
7 an ‘official,’ not to the organizational entity.”).

8 The FAC asserts “Pierce County . . . ratified the conduct” of its officers when it failed to
9 maintain the Officers on administrative leave pending a final investigation of the shooting and by
10 “Pierce County actively tr[ying] to conceal the identities” of the officers involved. (Dkt. No. 15
11 at 4.) As the FAC fails to identify an official with policy-making authority who is alleged to
12 have approved of the Officers’ actions, the FAC as written is insufficient to support a *Monell*
13 ratification claim.

14 In addition, even assuming the FAC did identify an official with policy-making authority,
15 it still lacks facts sufficient to support ratification. While the FAC asserts the Officers were
16 allowed to return to duty before an investigation was completed and otherwise not disciplined,
17 the failure to discipline does not establish ratification. *Sheehan*, 743 F.3d at 1231. And,
18 although the Court previously indicated a *Monell* ratification claim might be supported by the
19 combination of a failure to discipline and facts establishing active concealment of the identities
20 of the officers involved (*see* Dkt. No. 14 at 9), the FAC does not identify how Pierce County
21 actively concealed the Officers’ identities. The FAC notes only that it submitted a public records
22 request to an agency identified as South Sound 911. (Dkt. No. 15 at 4.) It makes no allegation
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1 Plaintiff submitted a public records request directly to Pierce County or that Pierce County had
2 an obligation to disclose information to Plaintiff and chose to disregard that duty.

3 In short, the FAC fails to allege facts sufficient to support a *Monell* claim.

4 **B. Negligence**

5 To allege negligence under Washington State law, Plaintiff must allege a duty, breach of
6 that duty, causation, and damages. *Brugh v. Fun-Tastic Rides Co.*, 8 Wash. App. 2d 176, 180
7 (2019) (referencing *Degel v. Majestic Mobile Manor, Inc.* 129 Wash. 2d 43, 48 (1996)).

8 1. Negligence against the County

9 The FAC asserts “Defendants breached [their duty to perform their policing functions in
10 accordance with the Fourth Amendment] by . . . dispatching two poorly trained rookie
11 officers . . . and by failing to have those officers wait for additional backup.” (Dkt. No. 15 at 6.)
12 Presumably, these allegations are aimed at Pierce County because Pierce County (or someone
13 working for the county) would have received the call and then taken steps to have the Officers
14 respond to the call. Similarly, failing to “have those officers wait” suggests Pierce County was
15 directing the Officers’ actions once Officers Wolfe and Chavez arrived at the scene.

16 The FAC does not identify what training was deficient such that the Officers were
17 “poorly trained.” It identifies only that the State administered BLEA training, which Pierce
18 County was not responsible for, disproportionately provided firearms training as compared to
19 “crisis management” and “patrol de-escalation” training. (*Id.* at 4.) There also is no factual
20 allegation the non-firearms training was deficient or that Pierce County was required to provide
21 additional non-firearms training in the period between the officers graduating from the BLEA
22 and the date of the incident.

1 As to the allegation that Pierce County failed to have the “officers wait for additional
2 backup,” the FAC does not identify any factual allegations that Pierce County was aware of the
3 specific circumstances the Officers encountered when they arrived at the scene such that Pierce
4 County could and should have directed the Officers to either engage the situation or wait for
5 other officers to arrive. (*Id.* at 6.) Nor is there any factual allegation the arrival of additional
6 officers would have prevented the Officers from making the intentional decision to shoot Curtis
7 French.

8 In short, Plaintiff’s identified basis for its negligence claim against Pierce County is
9 unsupported.

10 2. Negligence Claim against Officers Wolfe and Chavez

11 As to the negligence claim against the Officers, neither of the two allegations identified
12 as support for the negligence claim appear directed at the Officers. At most, it might be argued
13 Plaintiff alleges the Officers failed to wait for the arrival of additional law enforcement officers.
14 Again though, there is no factual allegation indicating the arrival of additional officers would
15 have prevented the Officers from making the intentional decision to shoot Curtis French.

16 Moreover, Plaintiff’s § 1983 claim is predicated on the Officers’ alleged use of excessive
17 force in violation of the Fourth Amendment. (Dkt. No. 15 at 5) (“Defendants . . . seized Curtis
18 French using unreasonable and unnecessary force without justification, in violation of the Fourth
19 Amendment . . . which guarantees the right to be free from unreasonable seizures and
20 deprivations of life”). As such, intentional conduct is required. *Brower v. County of Inyo*, 489
21 U.S. 593, 596 (1989) (“Violation of the Fourth Amendment requires an intentional acquisition of
22 physical control.”). This means Plaintiff must identify conduct or actions other than the
23 excessive force complained of to support the negligence claim.

1 The State Supreme Court identified that “ordinary negligence principles apply in
 2 situations that involve both a claim of . . . unprivileged use of force *and* the duty to act
 3 reasonably in carrying out law enforcement functions.” *Beltran-Serrano v. City of Tacoma*, 442
 4 P.3d 608, 612 (Wash. 2019). Therefore, the “series of actions culminating in the use of deadly
 5 force may be analyzed in its constituent parts or, alternatively, as involving either negligent or
 6 intentional conduct.” *Id.* In support of their negligence claim, the plaintiff in *Beltran-Serrano*
 7 identified the officer “unreasonably failed to follow police practices calculated to avoid the use
 8 of deadly force,” and that “leading up to the shooting” the officer failed “to respond
 9 appropriately to clear signs of mental illness or impairment,” decided “to continue to engage
 10 with Beltran-Serrano in English,” and “prevent[ed] him from walking away.” *Id.* at 611. The
 11 plaintiff further identified the officer lacked adequate training and failed “to recognize the
 12 ineffectiveness of using a stun gun against a mentally ill individual.” *Id.*² Considering the
 13 “totality of the circumstances” involved in *Beltran-Serrano*, the Court concluded the “series of
 14 actions leading up to the decision to shoot” supported the negligence claim. *Id.* at 612.

15 In contrast, as to the Officers in this case, Plaintiff appears to base the negligence claim
 16 against the Officers solely on their decision not to wait for additional officers to arrive at the
 17 scene. (Dkt. No. 15 at 6.) This one allegation does not identify a “series of actions” leading up
 18 to the decision to shoot sufficient to support a negligence claim.

19 C. Qualified Immunity

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22 ² The factual allegations supporting the negligence claim in *Beltran-Serrano* were based on
 23 testimony of the plaintiff’s police practice expert and other witnesses who described the applicable
 24 law enforcement practices and the specific training provided to the officer. *Id.* at 611 n.5. There
 are no similar facts asserted in the FAC.

Pierce County seeks dismissal of the entire FAC based on qualified immunity. “A court considering a claim of qualified immunity must determine whether the plaintiff has alleged the deprivation of an actual constitutional right and whether such right was clearly established such that it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted.” *NAACP of San Jose/Silicon Valley, et al. v. City of San Jose, et al*, 562 F. Supp. 3d 382, 395 (N.D. Cal. 2021)

“[D]etermining claims of qualified immunity at the motion-to-dismiss stage raises special problems for legal decision making.” *Keates v. Koile*, 883 F.3d 1228, 1234 (9th Cir. 2018). This is because “courts may be called upon to decide far-reaching constitutional questions on a nonexistent factual record[.]” *Kwai Fun Wong v. United States*, 373 F.3d 952, 957 (9th Cir. 2004). “If the operative complaint ‘contains even one allegation of a harmful act that would constitute a violation of a clearly established constitutional right,’ then plaintiffs are ‘entitled to go forward’ with their claims.” *Keates*, 883 F.3d at 1235 (9th Cir. 2018) (quoting *Pelletier v. Fed. Home Loan Bank of San Francisco*, 968 F.2d 865, 872 (9th Cir. 1992)).

Because the Court concludes the FAC has sufficiently pled a § 1983 excessive force claim against the Officers, consideration of Defendant’s request to dismiss based on qualified immunity at this stage of the litigation is inappropriate.

IV. CONCLUSION

Accordingly, and having considered Defendants’ Motions to Dismiss (Dkt Nos. 18, 26), the briefing of the parties, and the remainder of the record, the Court finds and ORDERS that the Motions are GRANTED in part and DENIED in part as follows:

1. The motion to dismiss the 42 U.S.C. § 1983 claim against Defendants Aaron Wolfe and Jason Chavez is DENIED.

2. The 42 U.S.C. § 1983 claim against Defendant Pierce County is DISMISSED.
3. The negligence claims against all Defendants are DISMISSED.
4. Plaintiff shall file a new amended complaint to correctly identify Defendant Jason Chavez by March 3, 2023.

Dated this 17th day of February, 2023.



David G. Estudillo
United States District Judge